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OFFICE OF PETITIONS

In re Application of :
Christophe Lefevre : CORRECTED DECISION
Application No. 09/836,158 : ON PETITION
Filed: 17 April, 2001 :
Att'y Docket No. KOB 18 :

This is a decision on the petition under 37 CFR 1.137(b),¹ filed on 19 January, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 23 August, 2003, for failure to file a proper reply to the final Office action mailed on 22 May, 2003, which set a three (3) month shortened statutory period for reply. On 3 November, 2003 (certificate of mailing date 22

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

October, 2003), petitioner submitted a Notice of Appeal and a two (2) month extension of time. The Notice of Appeal and extension of time fees, however, were paid in the small entity amount while no assertion of small entity status had ever been filed. On 5 March, 2004, petitioner filed a statement of small entity status along with a petition for extension of the time to reply to the Notice of Appeal petitioner attempted to file on 22 October, 2003.

On 27 July, 2004, a Notice of Allowance and Issue Fee Due was mailed, requiring payment of the issue fee in the large entity amount, and the publication fee. On 26 October, 2004, petitioner submitted payment of the issue fee in the small entity amount, and payment of the small entity amount.

On 14 December, 2004, a Notice of Abandonment was mailed for failure to timely pay the issue fee.

On 28 December, 2004, a Notice of Withdrawal from Issue was mailed, stating the application was being withdrawn from issue because of the fee deficiency.

Petitioner asserts that \$395.00 was paid on 8 October, 2004, to complete the large entity fees for the Notice of Appeal and extension of time petitioner attempted to file on 3 November, 2003. Petitioner states that the request to apply this amount to the fee deficiency was denied, and requests that this amount be applied towards the petition fee of \$750.00. Petitioner has submitted an additional \$355.00 with the present petition.

In light of the small entity status statement filed on 25 October, 2004, the fees paid on 8 October, 2004, will be applied towards the petition fee of \$750.00. As such, the proper petition fee has now been received.

The application is being forwarded to Technology Center Art Unit 1714 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions